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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,659	11/29/2001	Gerald E. Bennington	UV-133 CONT3	5782

1473 7590 11/17/2003

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1251 AVENUE OF THE AMERICAS
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EXAMINER	
LEE, MICHAEL	
ART UNIT	**PAPER NUMBER**
2614	21

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/997,659	BENNINGTON ET AL.	
	Examiner	Art Unit	
	M. Lee	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 June 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *17*.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiter et al. (4,751,578) in view of Young (4,706,121).

Regarding claims 1, 11, Reiter shows a displaying step for displaying at least a substantial portion of a program in at least a portion of the display (col. 6, lines 29-38), a displaying step for displaying at least one interactive program listing on the display simultaneously with the at least a substantial portion of the program (col. 6, lines 29-38), and an allowing step for allowing the user to select the at least one interactive program listing (col. 5, lines 34-36, col. 6, lines 47-54). But Reiter does not specify the displaying step for displaying a second program corresponding to the selected interactive program listing in at least a portion of the display, in response to receiving the selection from the user as claimed. Young, from the similar field of endeavor, teaches the displaying step as claimed (col. 11, lines 62-65). Young discusses the problem of conventional manual television channel selection (col. 2, lines 36-55). Reiter adapts such manual channel selection method (col. 4, lines 23-28). As pointed by Young, manual channel selection can be very laborious and cumbersome when the number of television channels is getting exponentially large. However, by employing the menu channel selection

method, the need of manual channel selection and the problem incurred by it are eliminated (Young, col. 3, lines 21-24). Hence, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include the menu selection feature of Young into Reiter so that the manual channels problems can be eliminated.

Regarding claims 2, 12, 22, the television schedule inherently includes a program title and a program channel (col. 4, lines 40-41).

Regarding claims 3, 13, 23, see col. 10, lines 50-59.

Regarding claims 4, 14, 24, Reiter and Young both shows a user control means (32 in Reiter and 116 in Young).

Regarding claims 5, 6, 15, 16, 25, 26, Reiter teaches that the program listing can be displayed in a window format (col. 2, lines 23-29) but does not specify the relative size in between the first portion than the second portion as claimed. In any event, it is well known that window display size is usually user configurable. To change the size of the window would have been considered an obvious design choice and would have been obvious to one of ordinary skill in the art.

Regarding claims 7-10, 17-20, 17-30, Reiter does not specify the reminder message as claimed. Young teaches such message (col. 15, lines 20-68, col. 20, lines 40-49). By using the reminder message, the user can be properly notified when a scheduled program is about to begin. Hence, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to include the reminder feature of Young into Reiter so that the user would not have to miss a single program.

Regarding claim 21, in addition of above, Reiter further shows a video display controller (64, 70), and a microprocessor (60), which is being programmed to carry out the functions as recited above (col. 7, lines 60-68).

Response to Arguments

3. Applicant's arguments filed 6/27/03 have been fully considered but they are not persuasive.

Regarding applicants' argument that "the enclosed 1.132 Declaration demonstrates the nonobviousness of claims 1-30 of the present application...the 1.132 Declaration contains objectives evidence of the copying, long felt need, and commercial success of applicants' claimed approach...It is well-settled that such objective evidence must be considered by the Examiner in determining the issue of obviousness of the claimed invention", the Examiner disagrees. First of all, the Young and Reiter references relied upon in the Office rejection had been published more than a year before applicants filing for patent, which are considered "statutory bar" references. A 1.132 or 1.132 Affidavits or Declaration cannot overcome a "statutory bar" reference. Second of all, in order to qualify the use of the 1.132 Affidavits or Declaration, the subject matter relied upon in the reference or activity must be applicants' own invention at the time of the invention was made. Clearly, none of the references were applicants' invention or owned by the applicants. Finally, to establish a prima facie case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. As demonstrated in the Office

rejection, the motivations or suggestions for combining Young and Reiter were all taught by the references themselves. Therefore, a prima facie case of obviousness is clearly established and the Office rejection sustains.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Lee whose telephone number is **703-305-4743**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **John Miller**, can be reached at **703-305-4795**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9306 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

M. Lee
Primary Examiner
Art Unit 2614

November 12, 2003